

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GUADALUPANA MEMORIAL CHAPEL &
MORTUARY
2601 Imperial Avenue
San Diego, CA 92102

Funeral Establishment License No. FD 1425,

JOSE M. CHAVEZ
2601 Imperial Avenue
San Diego, CA 92102

Funeral Director License No. FDR 750,

Respondents.

Case No. A1 2008 253

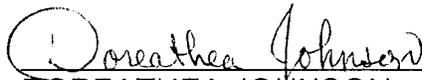
OAH No. 2009040367

DECISION

The attached Stipulated Settlement entitled "Stipulated Revocation of Licenses and Order" and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matters.

This Decision shall become effective July 10th, 2010.

IT IS SO ORDERED this 10th day of June, 2010.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs Division
Department of Consumer Affairs

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
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6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
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FOR THE CEMETERY AND FUNERAL BUREAU
10 **STATE OF CALIFORNIA**

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12 In the Matter of the Accusation Against:

13 GUADALUPANA MEMORIAL CHAPEL &
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14 2601 Imperial Avenue
San Diego, CA 92102

15 Funeral Establishment License No. FD 1425

16 JOSE M. CHAVEZ
17 2601 Imperial Avenue

18 San Diego, CA 92102

19 Funeral Director License No. FDR 750

20 Respondents.

Case No. A1 2008 253

OAH No. 2009040367

**STIPULATED REVOCATION OF
LICENSES AND ORDER**

21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
23 proceeding that the following matters are true:

24 PARTIES

25 1. Richard L. Wallinder, Jr. (Complainant) is the Bureau Chief of the Cemetery and
26 Funeral Bureau. He brought this action solely in his official capacity and is represented in this
27 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Antoinette B.
28 Cincotta, Deputy Attorney General.

1 the issuance of subpoenas to compel the attendance of witnesses and the production of
2 documents; the right to reconsideration and court review of an adverse decision; and all other
3 rights accorded by the California Administrative Procedure Act and other applicable laws.

4 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and
5 every right set forth above.

6 CULPABILITY

7 9. Respondents understand that the charges and allegations in First Amended
8 Accusation No. A1 2008 253, if proven at a hearing, constitute cause for imposing discipline
9 upon Respondent Jose M. Chavez's Funeral Director License and Respondent Guadalupana
10 Memorial Chapel & Mortuary Funeral Establishment License.

11 10. For the purpose of resolving the Accusation without the expense and uncertainty of
12 further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual
13 basis for the charges in the First Amended Accusation and that those charges constitute cause for
14 discipline. Respondents, and each of them, hereby give up the right to contest that cause for
15 discipline exists based on those charges.

16 11. Respondents understand that by signing this stipulation Respondents enable the
17 Director to issue an order accepting the Revocation of Respondent Jose M. Chavez's Funeral
18 Director License and Respondent Guadalupana Memorial Chapel & Mortuary Funeral
19 Establishment License without further process.

20 RESERVATION

21 12. The admissions made by Respondents herein are only for the purposes of this
22 proceeding, or any other proceedings in which the Director of Consumer Affairs, Cemetery and
23 Funeral Bureau or other professional licensing agency is involved, and shall not be admissible in
24 any other criminal or civil proceeding.

25 CONTINGENCY

26 13. This stipulation shall be subject to approval by the Director of Consumer Affairs or
27 his designee. Respondents understand and agree that counsel for Complainant and the staff of the
28 Cemetery and Funeral Bureau may communicate directly with the Director and staff of the

1 Department of Consumer Affairs regarding this stipulation and Revocation, without notice to or
2 participation by Respondent. By signing the stipulation, Respondents understand and agree that
3 Respondents may not withdraw this agreement or seek to rescind the stipulation prior to the time
4 the Director considers and acts upon it. If the Director fails to adopt this stipulation as the
5 Decision and Order, the Stipulated Revocation and Disciplinary Order shall be of no force or
6 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
7 and the Director shall not be disqualified from further action by having considered this matter.

8 14. The parties understand and agree that facsimile copies of this Stipulated Revocation
9 of Licenses and Order, including facsimile signatures thereto, shall have the same force and effect
10 as the originals.

11 15. This Stipulated Revocation of Licenses and Order is intended by the parties to be an
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
14 negotiations, and commitments (written or oral). This Stipulated Revocation of Licenses and
15 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
16 writing executed by an authorized representative of each of the parties.

17 16. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Director may, without further notice or formal proceeding, issue and enter the following
19 Order:

20 **ORDER**

21 IT IS HEREBY ORDERED that Funeral Director No. FDR 750, issued to Respondent Jose
22 M. Chavez, and Funeral Establishment License No. FD 1425, issued to Respondent Guadalupana
23 Memorial Chapel and Mortuary, are revoked by the Director of Consumer Affairs.

24 17. The revocation of Respondent Jose M. Chavez's Funeral Director license and
25 Respondent Guadalupana Memorial Chapel's Funeral Establishment license by the Bureau shall
26 constitute the imposition of discipline against Respondents. This stipulation constitutes a record
27 of the discipline and shall become a part of Respondents' license history with the Bureau.

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1 18. Respondent Jose M. Chavez shall lose all rights and privileges as a Funeral Director
2 and Respondent Guadalupana Memorial Chapel & Mortuary shall lose all rights and privileges as
3 a Funeral Establishment in California as of the effective date of the Director's Decision and
4 Order.

5 19. Respondents shall cause to be delivered to the Bureau both the Funeral Director
6 License and the Funeral Establishment License wall license certificate and, if one was issued,
7 pocket licenses on or before the effective date of the Decision and Order.

8 20. If either Respondent ever files an application for licensure or a petition for
9 reinstatement in the State of California, the Bureau shall treat it as a petition for reinstatement.
10 Respondents must comply with all the laws, regulations and procedures for reinstatement of a
11 revoked license in effect at the time the petition is filed, and all of the charges and allegations
12 contained in First Amended Accusation No. A1 2008 253 shall be deemed to be true, correct and
13 admitted by Respondents when the Director determines whether to grant or deny the petition.

14 21. Respondents shall pay the Bureau its costs of investigation and enforcement in the
15 amount of \$5,000.00 prior to issuance of a new or reinstated license.

16 22. Respondents shall immediately cease all advertising on behalf of Jose M. Chavez,
17 Funeral Director, and Guadalupana Memorial Chapel & Mortuary, Funeral Establishment, on or
18 before the effective date of the Decision and Order.

19 23. Respondents shall disconnect all telephone numbers used by Respondent
20 Guadalupana Memorial Chapel & Mortuary, and Jose M. Chavez, Funeral Director, including,
21 but not limited to (619) 544-9333 on or before the effective date of the Decision and Order.

22 24. Respondents comply with California Code of Regulations, Title 16, section 1269 by
23 filing with the Bureau a written, verified or audited report, on form 21 P-4A (1/94) prescribed and
24 furnished by the Bureau, pertaining to funds received and held under any pre-need arrangements,
25 contracts or plans described in and subject to the provisions of Article 9, Chapter 12, Division 3
26 of the Business and Professions Code (also known as Pre-Need Funeral Trust Funds) on or before
27 the effective date of the Decision and Order, if applicable.

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ACCEPTANCE

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I have carefully read the Stipulated Revocation of Licenses and Order. I understand the stipulation and the effect it will have on my Funeral Director, and Funeral Establishment. I enter into this Stipulated Revocation of Licenses and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 04/07/2010


JOSE M. CHAVEZ, Individually and Authorized Agent for and on behalf of GUADALUPANA MEMORIAL CHAPEL & MORTUARY Respondents

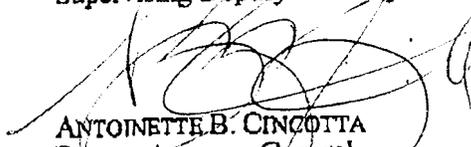
ENDORSEMENT

The foregoing Stipulated Revocation of Licenses and Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 5/12/2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. A1 2008 253

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA, State Bar No. 120482
Deputy Attorney General
4 110 West "A" Street, Suite 1100
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Case No. A1 2008 253

13 GUADALUPANA MEMORIAL CHAPEL &
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**FIRST AMENDED
ACCUSATION**

15 Funeral Establishment License No. FD 1425

16 JOSE M. CHAVEZ
17 2601 Imperial Avenue
San Diego, CA 92102

18 Funeral Director License No. FDR 750

19 Respondents.
20

21 Complainant alleges:

22 PARTIES

23 1. Richard L. Wallinder (Complainant) brings this First Amended Accusation
24 solely in his official capacity as the Bureau Chief of the Cemetery and Funeral Bureau,
25 Department of Consumer Affairs.¹
26

27 _____
28 1. Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was
vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery
Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into

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6. Code section 7686 provides:

“The bureau may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found guilty by the bureau of any of the acts or omissions constituting grounds for disciplinary action. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all the powers granted therein.

7. Code section 7702 provides:

“Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with the burial or other disposition of, human remains constitutes a ground for disciplinary action; provided, however, this section shall not apply to exterior casket hardware which is not sold to the purchaser, or where same is reserved by contract.”

8. Code section 7703 provides:

“Violation of any of the provisions of this chapter or the rules and regulations adopted pursuant to this chapter constitutes a ground for disciplinary action.”

9. Section 7704 of the Code states that violation of any state law or

municipal or county ordinance or regulation affecting the handling, custody, care or transportation of human remains constitutes a ground for disciplinary action.

10. Health and Safety Code section 103050 provides in relevant part:

“(a) No person shall dispose of human remains unless both of the following has occurred:

“(1) There has been obtained and filed with a local registrar a death certificate, as provided in Chapter 6 (commencing with Section 102775).

“(2) There has been obtained from a local registrar a permit for disposition. . . .”

11. Health and Safety Code section 103055 provides in relevant part:

“(a) If the certificate of death is properly executed and complete, the local registrar of births and deaths shall issue a permit for disposition”

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12. Health and Safety Code section 103075 provides in relevant part:

“... the permit shall accompany the body to its destination, where, if within this state, it shall be delivered to the person in charge of the place of interment.”

13. Code section 7692 provides:

“Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action.”

14. California Code of Regulations, title 16, section 1204 provides in relevant part:

“(a) Any person, association, partnership, corporation or other organization licensed and conducting business as a funeral establishment shall designate a licensed funeral director to manage the establishment, and shall report the designation to the Board within 10 days of the effective date of the designation.

“(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action.

“....

“(d) A funeral director who advertises his or her services . . . shall include his or her license number, the name and license number of the funeral establishment at which he or she is employed . . . on any . . . print advertising including, but not limited to, telephone and other directory listings, and newspaper and magazine advertisements.”

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1 15. California Code of Regulations, title 16, section 1211, subsection (a)
2 provides:

3 “(a) A funeral establishment shall include its name and license number, exactly as
4 shown by the Board's records, and city or community where located in all television and print
5 advertisements, including but not limited to telephone and other directory listings, television,
6 newspaper and magazine advertisements.”

7 16. California Code of Regulations, title 16, section 1214 provides:

8 “Except as otherwise provided in Health and Safety Code Section 7304, human
9 remains shall not be embalmed without the express authorization of a person having the legal
10 right to control disposition of the remains. Such authorization shall be secured by use of the form
11 prescribed by the Board, attached hereto as Exhibit 1, and made a part of this regulation. The
12 form shall be used in the exact form set forth below, without additions, substitutions, or
13 amendments.

14 “EXHIBIT 1

15 “AUTHORIZATION FOR DISPOSITION WITH

16 “OR WITHOUT EMBALMING

17 “TO: _____ (Funeral Establishment Name)

18 “RE: _____ (Decedent) I, _____

19 “do do not (check one) request embalming, which I understand is the addition to, or the
20 “replacement of, body fluids by chemical preservatives or the application of chemical
21 “preservatives for the temporary preservation of the body. I understand that embalming is not
22 “required by law.

23 “I understand that for storage or embalming purposes the decedent may be transported to the
24 “following licensed funeral establishment:

25 “ _____

26 “(name and address of funeral establishment)

27 “then returned for funeral services. I understand I may be charged an additional fee for transport.

28 “The undersigned hereby represents that he/she has the legal right to control disposition of the

1 "remains of the decedent.
2 "Signed: _____, Relationship _____
3 "Executed this ___ day of _____, _____, at City _____, State _____.
4 "To Be Completed by funeral establishment if Authorization to Embalm and Notification to
5 "Transport Is Obtained Orally (by Telephone):
6 "The above statement of authorization and notification was read to
7 " _____ (Relationship _____, who did ___ did not ___ (check one) authorize
8 "embalming at the above named funeral establishment. City _____, State ___, Phone
9 "(_____)
10 "Date and time authorization granted: _____
11 "Signature of funeral establishment representative accepting authorization.
12 "I declare under penalty of perjury that the foregoing is true and correct.
13 "Executed this _____ day of _____, _____, at City _____, State _____.
14 "(s) _____"
15 17. California Code of Regulations, title 16, section 1216, subsection (a)
16 provides:
17 "All preparation, embalming or storage room shall, at all times, be kept and
18 maintained in a clean and sanitary condition."
19 18. Health and Safety Code section 102778 provides:
20 "(a) On or before January 1, 2005, the department shall implement an Internet-
21 based electronic death registration system for the creation, storage, and transfer of death
22 registration information.
23 "(b) The electronic death registration system implemented pursuant to this section
24 shall protect the proper use of the death registration information created, stored, and transferred
25 within the system.
26 "(c) The electronic death registration system that is implemented pursuant to this
27 section shall be subject to any limitation placed on the accessibility and release of personally
28 ///

1 identifying information contained in those death records by any other provision of law or
2 subsequently enacted legislation.”

3 19. Health and Safety Code section 102780 provides:

4 “A funeral director, or person acting in lieu thereof, shall prepare the certificate
5 and register it with the local registrar.”

6 20. Health and Safety Code section 102795 provides in relevant part:

7 “The medical and health section data and the time of death shall be completed and
8 attested to by the physician and surgeon last in attendance, or in the case of a patient in a skilled
9 nursing or intermediate care facility at the time of death, by the physician and surgeon last in
10 attendance”

11 COST RECOVERY

12 21. Section 125.3 of the Code provides, in pertinent part, that the [Bureau]
13 may request the administrative law judge to direct a licentiate found to have committed a
14 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
15 investigation and enforcement of the case.

16 FIRST CAUSE FOR DISCIPLINE

17 (Wilful Transportation of Decedent to Mexico for Burial Without Death Certificate)

18 22. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent
19 Jose Chavez are subject to disciplinary action under Code section 7704 for violations of Health
20 and Safety Code sections 103050, 10355, and 103075 in that Respondents wilfully transported
21 the body of a deceased person to the international border of Mexico for transfer to a Tijuana
22 mortuary for burial without a properly executed and completed death certificate or a disposition
23 permit issued by a local registrar. The circumstances are as follows:

24 23. On or about July 9, 2008, Respondent Jose Chavez admitted to the
25 Bureau’s investigator that on July 2, 2008, he had, on behalf of Respondent Guadalupana
26 Memorial Chapel & Mortuary, taken the body of a deceased person, J.P., to the international
27 border of Mexico for transfer to Tijuana funeral home known as Funeraria Gonzalez without a
28 signed death certificate and a properly executed disposition permit.

1 deceased person, M.O.B. using the electronic death registration system by posing as the
2 decedent's physician without that physician's knowledge or consent;

3 g. On or about February 27, 2007, Respondent Jose Chavez on behalf of
4 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
5 deceased person, R.R. using the electronic death registration system by posing as the decedent's
6 physician without that physician's knowledge or consent;

7 h. On or about May 14, 2008, Respondent Jose Chavez on behalf of
8 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
9 deceased person, F.R. using the electronic death registration system by posing as the decedent's
10 physician without that physician's knowledge or consent;

11 i. On or about November 9, 2007, Respondent Jose Chavez on behalf of
12 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
13 deceased person, S.R. using the electronic death registration system by posing as the decedent's
14 physician without that physician's knowledge or consent;

15 j. On or about May 15, 2008, Respondent Jose Chavez on behalf of
16 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
17 deceased person, M.S.D. using the electronic death registration system by posing as the
18 decedent's physician without that physician's knowledge or consent.

19 THIRD CAUSE FOR DISCIPLINE

20 (Failure to Maintain Sanitary Embalming Room)

21 25. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent
22 Jose Chavez are subject to disciplinary action under Code section 7703 for violation of California
23 Code of Regulations, title 16, section 1216, subsection (a) for failing to maintain a clean and
24 sanitary embalming room. The circumstances are as follows:

25 26. On or about April 2, 2009, during an inspection of Respondents' facility,
26 the Board's investigator discovered the embalming room in an unclean and unsanitary condition
27 while the bodies of four deceased persons who had been embalmed were still on the premises. A
28 cabinet had fallen off the wall due to years of water damage and neglect. Dry wall debris littered

1 the floor. Large areas of the walls contained obvious water damage and were missing plaster and
2 paint. The fluorescent light dangled precariously from the ceiling from a large gaping hole. The
3 ceiling was missing many tiles. The floor was dirty and missing many tiles. The embalming
4 table and sump were both dirty.

5 FOURTH CAUSE FOR DISCIPLINE

6 (Failure of a Funeral Director to Comply with Advertising Requirements)

7 27. Respondent Jose Chavez is subject to disciplinary action under Code
8 section 7703 for violation of California Code of Regulations, title 16, section 1204, subsection
9 (d), for failing to comply with requirements when advertising his services. The circumstances
10 are as follows:

11 28. On or about April 2, 2009, during an inspection of Respondents' facility,
12 the Board's investigator picked up one of Respondent's business cards from the front office. On
13 that card, Respondent failed to provide his license number and license number of the funeral
14 establishment.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Failure of a Funeral Establishment to Comply with Advertising Requirements)

17 29. Respondents are subject to disciplinary action under Code section 7703 for
18 violation of California Code of Regulations, title 16, section 1211, subsection (a), for failing to
19 comply with requirements when advertising the funeral establishment's services. The
20 circumstances are as follows:

21 30. On or about April 2, 2009, during an inspection of Respondents' facility,
22 the Board's investigator picked up one of Respondent's business cards from the front office. On
23 that card, Respondents failed to provide the establishment's license number.

24 SIXTH CAUSE FOR DISCIPLINE

25 (Failure to Use the Correct Form for the Authorization for Disposition of a Body)

26 31. Respondents are subject to disciplinary action under Code section 7703 for
27 violation of California Code of Regulations, title 16, section 1214 for failing to use the Board's
28 prescribed form for the disposition of a body. The circumstances are as follows:

1 1215(b), 1216(a), 1216(d), 1216(b)(a) and 1216(b)(b). Respondent paid the fine on or about
2 December 10, 2007. That Citation is now final.

3 37. To determine the degree of discipline, if any, to be imposed on
4 Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about
5 July 11, 2008, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC
6 2008 75 and ordered Respondent to pay a fine of \$1,500.00 for violation of Code section
7 7685.1(a)(B), 7685(c)(b), and California Code of Regulations, title 16, sections 1258.1(a)(b),
8 1258.1(c)(1)(a), 1258.1(d)(b), 1258.1(e) and 1277.5 Respondent paid the fine on October 22,
9 2008. That Citation is now final.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 13 1. Revoking or suspending Funeral Establishment No. FD 1425 issued to
14 Guadalupana Memorial Chapel & Mortuary;
- 15 2. Revoking or suspending Funeral Director No. FDR 750 issued to Jose M.
16 Chavez;
- 17 3. Ordering Respondent Guadalupana Memorial Chapel & Mortuary to pay
18 the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of
19 this case pursuant to Business and Professions Code section 125.3;
- 20 4. Ordering Jose M. Chavez to pay the Cemetery and Funeral Bureau the
21 reasonable costs of the investigation and enforcement of this case pursuant to Business and
22 Professions Code section 125.3;
- 23 5. Taking such other and further action as deemed necessary and proper.

24 DATED: 9/11/09


25 RICHARD L. WALLINDER
26 Bureau Chief
27 Cemetery and Funeral Bureau
28 Department of Consumer Affairs
State of California
Complainant

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA, State Bar No. 120482
Deputy Attorney General
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8 Attorneys for Complainant

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14 2601 Imperial Avenue
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A C C U S A T I O N

15 Funeral Establishment License No. FD 1425

16 JOSE M. CHAVEZ
17 2601 Imperial Avenue
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18 Funeral Director License No. FDR 750

19 Respondents.
20

21 Complainant alleges:

22 PARTIES

23 1. Richard L. Wallinder (Complainant) brings this Accusation solely in his
24 official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of
25 Consumer Affairs.¹

26
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¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was
28 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery
Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into

1 6. Code section 7686 provides:

2 “The bureau may suspend or revoke licenses, after proper notice and hearing to
3 the licensee, if the licensee has been found guilty by the bureau of any of the acts or omissions
4 constituting grounds for disciplinary action. The proceedings under this article shall be conducted
5 in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the
6 bureau shall have all the powers granted therein.

7 7. Section 7704 of the Code states that violation of any state law or
8 municipal or county ordinance or regulation affecting the handling, custody, care or
9 transportation of human remains constitutes a ground for disciplinary action.

10 8. Health and Safety Code section 103050 provides in relevant part:

11 “(a) No person shall dispose of human remains unless both of the following has
12 occurred:

13 “(1) There has been obtained and filed with a local registrar a death certificate, as
14 provided in Chapter 6 (commencing with Section 102775).

15 “(2) There has been obtained from a local registrar a permit for disposition. . . .”

16 9. Health and Safety Code section 103055 provides in relevant part:

17 “(a) If the certificate of death is properly executed and complete, the local
18 registrar of births and deaths shall issue a permit for disposition”

19 10. Health and Safety Code section 103075 provides in relevant part:

20 “. . . the permit shall accompany the body to its destination, where, if within this
21 state, it shall be delivered to the person in charge of the place of interment.”

22 11. Code section 7692 provides:

23 “Misrepresentation or fraud in the conduct of the business or the profession of a
24 funeral director or embalmer constitutes a ground for disciplinary action.”

25 12. California Code of Regulations, title 16, section 1204(b) provides:

26 “(b) The designated managing licensed funeral director of a licensed funeral
27 establishment shall be responsible for exercising such direct supervision and control over the
28 conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral

1 Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the
2 Health and Safety Code. Failure of the designated managing licensed funeral director and/or the
3 licensed funeral establishment to exercise such supervision or control, or failure of the holder of
4 the funeral establishment license to make such designation shall constitute a ground for
5 disciplinary action.”

6 13. Health and Safety Code section 102778 provides:

7 “(a) On or before January 1, 2005, the department shall implement an Internet-
8 based electronic death registration system for the creation, storage, and transfer of death
9 registration information.

10 “(b) The electronic death registration system implemented pursuant to this section
11 shall protect the proper use of the death registration information created, stored, and transferred
12 within the system.

13 “(c) The electronic death registration system that is implemented pursuant to this
14 section shall be subject to any limitation placed on the accessibility and release of personally
15 identifying information contained in those death records by any other provision of law or
16 subsequently enacted legislation.”

17 14. Health and Safety Code section 102780 provides:

18 “A funeral director, or person acting in lieu thereof, shall prepare the certificate
19 and register it with the local registrar.”

20 15. Health and Safety Code section 102795 provides in relevant part:

21 “The medical and health section data and the time of death shall be completed and
22 attested to by the physician and surgeon last in attendance, or in the case of a patient in a skilled
23 nursing or intermediate care facility at the time of death, by the physician and surgeon last in
24 attendance”

25 COST RECOVERY

26 16. Section 125.3 of the Code provides, in pertinent part, that the [Bureau]
27 may request the administrative law judge to direct a licentiate found to have committed a

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1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Wilful Transportation of Decedent to Mexico for Burial Without Death Certificate)

5 17. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent
6 Jose Chavez are subject to disciplinary action under Code section 7704 for violations of Health
7 and Safety Code sections 103050, 10355, and 103075 in that Respondents wilfully transported
8 the body of a deceased person to the international border of Mexico for transfer to a Tijuana
9 mortuary for burial without a properly executed and completed death certificate or a disposition
10 permit issued by a local registrar. The circumstances are as follows:

11 18. On or about July 9, 2008, Respondent Jose Chavez admitted to the
12 Bureau's investigator that on July 2, 2008, he had, on behalf of Respondent Guadalupana
13 Memorial Chapel & Mortuary, taken the body of a deceased person, J.P., to the international
14 border of Mexico for transfer to Tijuana funeral home known as Funeraria Gonzalez without a
15 signed death certificate and a properly executed disposition permit.

16 SECOND CAUSE FOR DISCIPLINE

17 (Misrepresentation or Fraud)

18 19. Respondent Guadalupana Memorial Chapel & Mortuary and Respondent
19 Jose Chavez are subject to disciplinary action under Code section 7692 for misrepresentation or
20 fraud in providing false information required by Health and Safety Code section 102795. The
21 circumstances are as follows:

22 a. On or about October 22, 2007, Respondent Jose Chavez on behalf of
23 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
24 deceased person, I.D.R. using the electronic death registration system by posing as the decedent's
25 physician without that physician's knowledge or consent;

26 b. On or about February 27, 2007, Respondent Jose Chavez on behalf of
27 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a

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1 deceased person, R.R. using the electronic death registration system by posing as the decedent's
2 physician without that physician's knowledge or consent;

3 c. On or about February 27, 2007, Respondent Jose Chavez on behalf of
4 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
5 deceased person, M.G.R. using the electronic death registration system by posing as the
6 decedent's physician without that physician's knowledge or consent;

7 d. On or about April 18, 2008, Respondent Jose Chavez on behalf of
8 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
9 deceased person, A.J.C. using the electronic death registration system by posing as the decedent's
10 physician without that physician's knowledge or consent;

11 e. On or about May 2, 2008, Respondent Jose Chavez on behalf of
12 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
13 deceased person, A.D. using the electronic death registration system by posing as the decedent's
14 physician without that physician's knowledge or consent;

15 f. On or about May 15, 2008, Respondent Jose Chavez on behalf of
16 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
17 deceased person, M.O.B. using the electronic death registration system by posing as the
18 decedent's physician without that physician's knowledge or consent;

19 g. On or about February 27, 2007, Respondent Jose Chavez on behalf of
20 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
21 deceased person, R.R. using the electronic death registration system by posing as the decedent's
22 physician without that physician's knowledge or consent;

23 h. On or about May 14, 2008, Respondent Jose Chavez on behalf of
24 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
25 deceased person, F.R. using the electronic death registration system by posing as the decedent's
26 physician without that physician's knowledge or consent;

27 i. On or about November 9, 2007, Respondent Jose Chavez on behalf of
28 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a

1 deceased person, S.R. using the electronic death registration system by posing as the decedent's
2 physician without that physician's knowledge or consent;

3 j. On or about May 15, 2008, Respondent Jose Chavez on behalf of
4 Respondent Guadalupana Memorial Chapel & Mortuary attested to the cause of death of a
5 deceased person, M.S.D. using the electronic death registration system by posing as the
6 decedent's physician without that physician's knowledge or consent;

7 DISCIPLINE CONSIDERATIONS

8 20. To determine the degree of discipline, if any, to be imposed on
9 Respondent Jose M. Chavez, Complainant alleges that on or about February 21, 2003, in a prior
10 action, the Cemetery and Funeral Bureau issued Citation Number IC 2003 28 and ordered
11 Respondent to pay a fine of \$1,502.00 for violation of Code section 7707, and California Code of
12 Regulation, title 16, section 1204(b). That Citation is now final. Respondent paid the fine on or
13 about December 15, 2003.

14 21. To determine the degree of discipline, if any, to be imposed on
15 Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about
16 February 21, 2003, in a prior action, the Cemetery and Funeral Bureau issued Citation Number
17 IC 2003 27 and ordered Respondent to pay a fine of \$2,500.00 for violation of Code section
18 7680, 7680(c), 7685, 7685(a), 7685.3 and California Code of Regulations, title 16, sections 1211,
19 1214, 1216, 1258.1(c), and 1258.1(c). That Citation is now final. Respondent paid the fine on
20 or about December 15, 2003.

21 22. To determine the degree of discipline, if any, to be imposed on
22 Respondent Guadalupana Memorial Chapel & Mortuary, Complainant alleges that on or about
23 May 25, 2007, in a prior action, the Cemetery and Funeral Bureau issued Citation Number IC
24 2007 59 and ordered Respondent to pay a fine of \$4,308.00 for violation of Code sections
25 7616(a)(2), 7635(a), 7635(a), (b), and California Code of Regulations, title 16, sections 1209,
26 1215(b), 1216(a), 1216(d), 1216(b)(a) and 1216(b)(b). Respondent paid the fine on or about
27 December 10, 2007. That Citation is now final.

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